

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDGAR C. CALLENDAR,	:	No. 4:cv 05-0702
	:	
Plaintiff,	:	(Judge Jones)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
DEPUTY WARDEN BOWEN, <u>et al.</u> ,	:	
	:	
Defendants.	:	

**ORDER**

**June 24, 2005**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

Plaintiff Edgar C. Callendar (“Plaintiff” or “Callendar”), while an inmate at the York County Prison, filed this civil rights action pursuant to 42 U.S.C. § 1983. This Court has federal question on jurisdiction pursuant to 28 U.S.C. § 1331. The case was referred to Magistrate Judge Thomas M. Blewitt for preliminary review.

On May 13, 2005, Magistrate Judge Blewitt issued a Report recommending that Callendar’s action be dismissed for failure to file the requisite filing fee or to submit an application for leave to proceed in forma pauperis.

The time allowed for parties to file objections to the Magistrate Judge’s report expired on May 31, 2005. Because no objections have been filed, this

matter is ripe for disposition.

When no objections are made to a magistrate's report, the district court is not statutorily required to review a magistrate judge's report before accepting it. See Thomas v. Arn, 474 U.S. 140, 149 (1985). According to the Third Circuit, however, "the better practice is to afford some level of review to dispositive legal issues raised by the report." Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). When a district court accepts a magistrate judge's report, the report becomes the judgment of the court. Id.

Our review of this case confirms the Magistrate Judge's determinations and we have not been presented with any reason to revisit them. As noted by Magistrate Judge Blewitt, Petitioner was sent several notices informing him of the requirement that he either pay the filing fee or complete an application for leave to proceed in forma pauperis. The notices were sent to Callendar's address on record at York County Prison as well as to an address in Philadelphia that Callendar listed on his complaint.<sup>1</sup> All documents were returned to the Court as undeliverable. Middle District of Pennsylvania Local Rule 83.18 deems documents sent to an address on file as properly served on that party. Further, Federal Rule of Civil

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<sup>1</sup> According to officials at the York County Prison, Callendar has now been deported from the United States. While this accounts for the return of the notices sent to him, it does not excuse his failure to pay the filing fee or to complete an in forma pauperis application.

Procedure 41(b) permits us to dismiss Callendar's claim for a "failure to prosecute" and to otherwise "comply with [an] order of court." We deem Callendar's failure to respond to these notices as a failure to prosecute.

Because we find no error in Magistrate Judge Blewitt's Report and Recommendation and because no objections have been filed we will adopt them as our own.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Magistrate Judge Blewitt's Report and Recommendation (Rec. Doc. 5) is adopted in toto.
2. Plaintiff Edgar C. Callendar's complaint (Rec. Doc. 1) is DISMISSED without prejudice.
3. The Clerk is directed to close the file on this case.

s/ John E. Jones III  
John E. Jones III  
United States District Judge